From: Matthew Flaschen [e-mail redacted]
Sent: Thursday, September 23, 2010 8:06 PM
To: Bilski_Guidance
Subject: Restrict software patents

To Whom It May Concern:

Though I am not an attorney, I am writing to express my sincere opinion that the USPTO should cease allowing the patenting of software. There are several justifications for this course of action. In the U.S., software is a literary work, and is thus fully protected under copyright law. It makes no more sense to additionally protect software ideas (as opposed to expression), then it would to patent a clever novel plot.

Second, all software is equivalent to lambda calculus, and under Gottschalk v. Benson, abstract ideas are not supposed to be patentable.

Finally, and most importantly, there is serious doubt about whether software patents accomplish the Constitutional goal of "promot[ing] the progress of science and useful arts." An Empirical Look at Software Patents (http://ssrn.com/abstract=461701) found in sharp contrast that:

"Our results are difficult to reconcile with the traditional incentive theory – that granting more patents will increase R&D investments. Rather, if legal changes have encouraged strategic patenting, the result might well be less innovation."

Many of the biggest software patenters opposed them before they had acquired so many. Bill Gates wrote:

"If people had understood how patents would be granted when most of today's ideas were invented, and had taken out patents, the industry would be at a complete standstill today."

Oracle, the plaintiff in the recent software patent lawsuit against Google, said in 1994 that:

"existing copyright law and available trade secret protections, as opposed to patent law, are better suited to protecting computer software developments."

I strongly urge you to find that software may no longer be patented.

Matthew Flaschen